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Attorneys for Defendants

UNITED STATES DISTRICT COURT  
DISTRICT OF ALASKA

MYRNA I. JOHNSON,  
Plaintiff,

v.

FRED MEYER STORES, INC., a  
Delaware corporation; and JAIME SAN  
MIGUEL,

Defendants.

Case No. 1J-04-008-CV (RRB)

**DECLARATION OF JAMES R. DICKENS (4/18/08)**  
**IN RESPONSE TO MOTION TO STRIKE**

1. I am counsel for defendant Fred Meyer Stores, Inc., and make this declaration based on my personal knowledge.
2. This declaration is being filed in response to plaintiff's motion to strike defendant's motion re jury instructions.
3. Defendant's motion re jury instructions was filed in good faith after the comments by plaintiff's counsel and suggestions by the Court during the conference call on March 6, 2008.

DECLARATION OF JAMES R. DICKENS (4/18/08)  
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4. During the March 6, 2008, conference call, plaintiff's counsel continued to argue an issue (the "sweetie" rule) on which the Court, after substantial review and briefing by the parties, had ruled against plaintiff on October 5, 2007. Plaintiff's counsel then suggested the possibility of a special verdict form so this issue could be pursued on appeal. The Court responded that this could prejudice the jury (we agree that this special verdict form would be improper and unduly prejudicial).

5. During the March 6, 2008, conference call the Court advised that it would help to manage the trial if when all of us fly to or assemble in Juneau for the August 11 trial that we already have the appropriate jury instructions. Therefore, if we are going to resolve this issue it would be best to do so sooner by motion rather than wait until the trial to argue the jury instructions. Accordingly, on behalf of defendants we submitted our motion that the Court direct that defendants' four proposed jury instructions on liability and damages be accepted.

6. Plaintiff's motion to strike should be denied. Given the many discussions and briefs on various issues, winnowing them down to the sole claim remaining, we have to resolve the issue of proper jury instructions at some point and before trial would be helpful to frame the issues and manage the evidence. Plaintiff's motion ignores this obligation to resolve the jury instructions, and the benefit to doing so at this time. The proposed instructions submitted on behalf of defendant Fred Meyer correctly state Alaska law regarding liability and damages for an implied contract claim alleging a breach of the covenant of good faith and fair dealing.

7. As this action has progressed the analytical focus has sharpened with regard to what is the remaining claim and the proper analysis under Alaska law. The Court's earlier rulings on a broad context subsequently have been refined. They do not as a matter of principle prevent the Court from examining the proposed jury

instructions before trial. This was the cornerstone of defendant's original motion and plaintiff's motion to strike should be denied.

DATED this 18<sup>th</sup> day of April, 2008.

MILLER NASH LLP

s/ James R. Dickens

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Certificate of Service

I hereby certify that on April 18, 2008,  
a copy of the foregoing was served  
electronically on:

Mark Choate

lawyers@choatelawfirm.com

s/ James R. Dickens

DECLARATION OF JAMES R. DICKENS (4/18/08)

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